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11 Attorneys for Defendant  
12 HARTFORD LIFE INSURANCE COMPANY

13 UNITED STATES DISTRICT COURT  
14  
15 NORTHERN DISTRICT OF CALIFORNIA

16 VICKI CAPRIO and DUANE A.  
17 BARBAROTTO as Nicholas J.  
18 Barbarotto's Successor in Interest,

19 Plaintiff,

20 v.

21 HARTFORD LIFE INSURANCE  
22 COMPANY, a corporation doing business  
23 as THE HARTFORD and HARTFORD  
24 LIFE AND ACCIDENT INSURANCE  
25 COMPANY, and DOES 1 through 20,  
26 inclusive,

27 Defendants.

CASE NO. C 08-0338 CW

**ANSWER OF DEFENDANT HARTFORD  
LIFE INSURANCE COMPANY TO  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

28 COMES NOW defendant Hartford Life Insurance Company ("Hartford") and hereby  
29 answers the first amended complaint ("FAC") of plaintiffs Vicki Caprio and Duane A.  
30 Barbarotto as Nicholas J. Barbarotto's Successors in Interest ("Plaintiffs") as follows:

31 1. In response to the averments contained in paragraph 1 of the FAC, Hartford  
32 admits that Nicholas J. Barbarotto is deceased. Hartford is without knowledge or information  
33 sufficient to form a belief as to the truth of the remaining averments contained in paragraph 1 of  
34 the FAC, and therefore denies such averments.

35 2. Hartford admits the averments contained in paragraph 2 of the FAC.

1           3.       Hartford is without knowledge or information sufficient to form a belief as to the  
2 truth of the averments contained in paragraph 3 of the FAC, and therefore denies such  
3 averments.

4           4.       Hartford is without knowledge or information sufficient to form a belief as to the  
5 truth of the averments contained in paragraph 4 of the FAC, and therefore denies such  
6 averments.

7           5.       Hartford is without knowledge or information sufficient to form a belief as to the  
8 truth of the averments contained in paragraph 5 of the FAC, and therefore denies such  
9 averments.

10          6.       In response to the averments of paragraph 6 of the FAC, Hartford admits that it is  
11 a corporation with its principal place of business in Connecticut, and was at all relevant times  
12 authorized to transact business in California. Hartford denies that is it a corporation doing  
13 business as The Hartford and Hartford Life and Accident Insurance Company. The Hartford is a  
14 trade name used by several different insurance companies and service providers.

15          7.       In response to the averments contained in paragraph 7 of the FAC, Hartford  
16 admits that this Court has diversity jurisdiction, and venue is proper in this Court. Hartford  
17 denies that Plaintiffs or Nicholas J. Barbarotto were damaged by Hartford.

18          8.       Hartford is without knowledge or information sufficient to form a belief as to the  
19 truth of the averments contained in paragraph 8 of the FAC, and therefore denies such  
20 averments.

21          9.       Hartford is without knowledge or information sufficient to form a belief as to the  
22 truth of the averments contained in paragraph 9 of the FAC, and therefore denies such  
23 averments.

24          10.       In response to the averments contained in paragraph 10 of the FAC, Hartford  
25 admits that it issued group accidental death and dismemberment policy no. ADF-1037 to the  
26 State Bar of California, subject to all of the terms, conditions, limitations, exclusions, and  
27 endorsements contained therein. Hartford further admits that Nicholas J. Barbarotto and his wife  
28 participated under policy ADF-1037. Hartford denies the remaining averments contained in

1 paragraph 10 of the FAC.

2 11. In response to the averments contained in paragraph 11 of the FAC, Hartford  
3 admits that it issued group accidental death and dismemberment policy no. ADD-6460 to  
4 Attorneys Group Insurance Trust, subject to all of the terms, conditions, limitations, exclusions,  
5 and endorsements contained therein. Hartford further admits that Nicholas J. Barbarotto and his  
6 wife participated under policy ADD-6460. Hartford denies the remaining averments contained  
7 in paragraph 11 of the FAC.

8 12. In response to the averments contained in paragraph 12 of the FAC, Hartford  
9 admits on information and belief that the premiums were paid under policy no. ADF-1037 and  
10 policy no. ADD-6460 ("Policies"). Hartford denies each and every remaining averment  
11 contained in paragraph 12 of the FAC.

12 13. Hartford is without knowledge or information sufficient to form a belief as to the  
13 truth of the averments contained in paragraph 13 of the FAC, and therefore denies such  
14 averments.

15 14. In response to the averments contained in paragraph 14 of the FAC, Hartford  
16 admits that Tamara Barbarotto died on October 18, 2002. Hartford denies each and every  
17 remaining averment contained in paragraph 14 of the FAC.

18 15. In response to the averments contained in paragraph 15 of the FAC, Hartford  
19 admits that claims were filed timely under the Policies, but denies each and every remaining  
20 averment contained in paragraph 15 of the FAC.

21 16. Hartford denies each and every averment contained in paragraph 16 of the FAC.

22 17. In response to the averments set forth in paragraph 17 of the FAC, Hartford  
23 admits that on February 22, 2006, an action was filed in this Court by attorneys, purporting to  
24 represent Nicholas J. Barbarotto, individually, and as Trustee of the Nicholas J. Barbarotto  
25 Revocable Trust Agreement dated November 2, 2005, against Hartford Life Insurance Company  
26 and Hartford Life and Accident Insurance Company, case no. C06-1278 ("2006 action"). On  
27 October 19, 2006, the court entered a dismissal with prejudice in the 2006 action. Plaintiffs then  
28 filed this action a year later, alleging that at the time the 2006 action was filed, Nicholas J.

1 Barbarotto was deceased. By order dated June 17, 2008, this Court held that the 2006 action was  
2 void at its inception because Nicholas J. Barbarotto was deceased at the time the action had been  
3 filed. Hartford denies the remaining averments contained in paragraph 17 of the FAC.

4 18. Hartford incorporates by reference its responses to paragraphs 1 through 17 of the  
5 FAC as though fully set forth herein.

6 19. In response to the averments contained in paragraph 19 of the FAC, Hartford  
7 admits that premiums have been paid under the Policies, but denies plaintiffs are entitled to the  
8 benefits they seek. Hartford denies each and every remaining averment contained in paragraph  
9 19 of the FAC.

10 20. Hartford denies each and every averment contained in paragraph 20 of the FAC.

11 21. Hartford denies each and every averment contained in paragraph 21 of the FAC.

12 22. Hartford incorporates by reference its responses to paragraphs 1 through 21 of the  
13 FAC as though fully set forth herein.

14 23. Hartford denies each and every averment contained in paragraph 23 of the FAC,  
15 including all subparts (a) through (g).

16 24. Hartford denies each and every averment contained in paragraph 24 of the FAC.

17 25. Hartford denies each and every averment contained in paragraph 25 of the FAC.

18 26. Hartford denies each and every averment contained in paragraph 26 of the FAC.

19 27. Hartford incorporates by reference its responses to paragraphs 1 through 26 of the  
20 FAC as though fully set forth herein.

21 28. Hartford is without knowledge or information sufficient to form a belief as to the  
22 truth of the averments contained in paragraph 28 of the FAC, and therefore denies such  
23 averments.

24 29. Hartford is without knowledge or information sufficient to form a belief as to the  
25 truth of the averments contained in paragraph 29 of the FAC, and therefore denies such  
26 averments.

27 30. Hartford is without knowledge or information sufficient to form a belief as to the  
28 truth of the averments contained in paragraph 30 of the FAC, and therefore denies such

1 averments.

2 31. Hartford denies each and every averment contained in paragraph 31 of the FAC.

3 32. Hartford denies each and every averment contained in paragraph 32 of the FAC.

4 33. Hartford denies each and every averment contained in paragraph 33 of the FAC.

5 34. Hartford denies each and every averment contained in paragraph 34 of the FAC.

6 AFFIRMATIVE DEFENSES

7 FIRST AFFIRMATIVE DEFENSE

8 The FAC, and each purported cause of action therein, fails to state a claim upon which  
9 relief can be granted.

10 SECOND AFFIRMATIVE DEFENSE

11 The claims asserted in the FAC are barred in whole or in part by the terms, definitions,  
12 exclusions, conditions, limitations, and endorsements contained in the accidental death and  
13 dismemberment policies which are the subject of the FAC.

14 THIRD AFFIRMATIVE DEFENSE

15 Hartford alleges that if the subject accidental death and dismemberment policies are  
16 governed by Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.*, and thus  
17 plaintiffs' state law claims are preempted. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987).

18 FOURTH AFFIRMATIVE DEFENSE

19 The claims asserted in the FAC are barred in whole or in part by the terms, definitions,  
20 exclusions, conditions, limitations, and endorsements contained in the accidental death and  
21 dismemberment policies and/or employee benefit plan which are the subject of the FAC and/or  
22 the terms and provisions of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001,  
23 *et seq.*

24 FIFTH AFFIRMATIVE DEFENSE

25 Hartford alleges that the accidental death and dismemberment policies which are the  
26 subject of the FAC provide exclusions for losses caused by or resulting from any sickness or  
27 disease, which bars plaintiffs' recovery in this action.

28 SIXTH AFFIRMATIVE DEFENSE

1 Hartford seeks a declaration that plaintiffs are not entitled to benefits under the subject  
2 accidental death and dismemberment policies on grounds that Tamara Barbarotto's death was  
3 caused by and was a result of sickness or disease, which is specifically excluded from coverage  
4 under the policies.

5  
6 SEVENTH AFFIRMATIVE DEFENSE

7 Plaintiffs have failed to perform all of the obligations and conditions set forth under the  
8 accidental death and dismemberment policies which are the subject of the FAC and/or the  
9 Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.*

10 EIGHTH AFFIRMATIVE DEFENSE

11 To the extent that it is determined that Nicholas J. Barbarotto or Tamara Barbarotto  
12 misrepresented or failed to disclose or omitted material information in connection with any  
13 application for insurance or application for accidental death and dismemberment benefits,  
14 plaintiff's claims are barred.

15 NINTH AFFIRMATIVE DEFENSE

16 The FAC, and each cause of action contained therein, fails to state sufficient facts to  
17 constitute a valid claim for attorneys' fees.

18 TENTH AFFIRMATIVE DEFENSE

19 Hartford alleges that, if the FAC was not brought in good faith pursuant to Rule 11 of the  
20 Federal Rules of Civil Procedure, it is entitled to and will seek reasonable expenses, including  
21 attorneys' fees incurred in defending the action.

22 ELEVENTH AFFIRMATIVE DEFENSE

23 Plaintiffs have not suffered any damages as a result of any actions taken by Hartford, and  
24 plaintiffs are thus barred from asserting the FAC, or any purported cause of action therein,  
25 against Hartford.

26 TWELFTH AFFIRMATIVE DEFENSE

27 Hartford and its representatives acted reasonably and in good faith at all times material  
28 herein, based on all relevant facts and circumstances known by them at the time they so acted.

1 Accordingly, plaintiffs are barred from any recovery in this action.

2 THIRTEENTH AFFIRMATIVE DEFENSE

3 Plaintiffs' claims, in whole or in part, are barred by the equitable doctrines of laches,  
4 waiver, and estoppel.

5  
6 FOURTEENTH AFFIRMATIVE DEFENSE

7 Hartford alleges that the FAC fails to state facts sufficient to warrant an award of  
8 punitive or exemplary damages, and plaintiffs have failed to plead malice, fraud, or oppression  
9 with the specificity required under California Civil Code § 3294.

10 FIFTEENTH AFFIRMATIVE DEFENSE

11 The FAC, to the extent it seeks punitive or exemplary damages against Hartford, violates  
12 Hartford's right to protection from "excessive" fines as provided in the Eighth Amendment to  
13 the United States Constitution and the Constitution of the State of California, violates Hartford's  
14 right to substantive due process and equal protection as provided in the Fifth and Fourteenth  
15 Amendments to the United States Constitution and the Constitution of the State of California,  
16 and does not meet the tests for allowing punitive damages set forth by the United States Supreme  
17 Court in *BMW v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996), *State Farm Ins. Co. v. Campbell*,  
18 538 U.S. 408, 123 S.Ct. 1553 (2003), *Philip Morris USA v. Williams*, 549 U.S. \_\_; 127 S.Ct.  
19 1057, 166 L.Ed.2d 940 (2007), and other cases, and therefore fails to state a claim supporting the  
20 punitive or exemplary damages asserted.

21 SIXTEENTH AFFIRMATIVE DEFENSE

22 Hartford alleges that the FAC, and each purported cause of action contained therein, fails  
23 to state sufficient facts to constitute a valid claim for general damages for mental and emotional  
24 distress.

25 SEVENTEENTH AFFIRMATIVE DEFENSE

26 Hartford alleges that recoverable damages, if any, are limited by California Code of Civil  
27 Procedure Section 337.34.

28 EIGHTEENTH AFFIRMATIVE DEFENSE

1 Hartford alleges that plaintiffs' claims, in whole or in part, are barred by the applicable  
2 statute of limitations and/or the contractual limitations period.

3 NINETEENTH AFFIRMATIVE DEFENSE

4 Hartford alleges that its coverage interpretations and claims handling were and are  
5 reasonable as a matter of law and were not and are not inherently unreasonable as a matter of  
6 law.

7 TWENTIETH AFFIRMATIVE DEFENSE

8 Plaintiffs have failed to set out their claims with sufficient particularity to permit  
9 Hartford to raise all appropriate defenses and, thus, Hartford reserves its rights to add additional  
10 defenses as a factual basis as these claims become known.

11 WHEREFORE, defendant Hartford Life Insurance Company prays for judgment as  
12 follows:

- 13 1. That plaintiffs take nothing by reason of the first amended complaint; and  
14 2. That Hartford be awarded costs of suit herein and such other and further  
15 relief as the court deems just and proper.

16 DATED: July 14, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

17  
18  
19 By: /s/ Michelle Y. McIsaac  
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21 MICHELLE Y. MCISAAC  
22 Attorneys for Defendant  
23 HARTFORD LIFE INSURANCE COMPANY  
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